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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/691,842 | 10/23/2003 | Norman John Garden | LAMA121885 | 6684 |

26389 7590 02/15/2005

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| EXAMINER |
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HECKENBERG JR, DONALD H

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| ART UNIT | PAPER NUMBER |
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1722

DATE MAILED: 02/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/691,842

Applicant(s)

GARDEN

Examiner

Donald Heckenberg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on October 23, 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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1. Acknowledgment is made of Applicant's claim for foreign priority based on an application filed in Canada on August 27, 2003. It is noted, however, that Applicant has not filed a certified copy of the Canadian application as required by 35 U.S.C. 119(b).

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Jennings, Jr. et al. (U.S. Pat. No. 3,920,349).

Initially it is noted that claim 1 includes two "means for" clauses. Both of these elements have been interpreted as invoking 35 U.S.C. § 112, sixth paragraph, and thereby are limited to the corresponding structure described in the specification and equivalents thereof. In re Donaldson, 16 F.3d 1189, 1194, 29 USPQ2d 1845, 1850 (Fed. Cir. 1994); MPEP § 2181. Thus, the "means for causing concrete to flow from the hopper through the lower concrete outlet to the slip form" has been

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interpreted as being a vibrator or equivalent thereof as described at page 3, lines 5 and 6 of the specification. The "means for selectively locking the support in one of the first or the second position" has been interpreted as being a locking pin arrangement or equivalent thereof as described at page 3, lines 16-22 of the specification.

Jennings discloses a curb forming apparatus. The apparatus comprises a hopper (26) for initially holding concrete. The concrete leaves the hopper (26) and enters a housing (30) before moving to the slip form (34). The housing (30) is thus a "hopper" as well as it temporarily contains the concrete supply before it is directed to the slip form.

Jennings further provides a mounting (the pin at central axis 72) adapted to mount to a vehicle structure (12). A hopper support arm (68') is secured to the hopper-housing (30), with the support arm being pivotally mounted to the mounting for pivotal movement between a first position with the hopper extending toward a first side of the vehicle (Fig. 2), and a second position with the hopper extending toward a second side of the vehicle (Fig. 3). Means for locking the support arm in one of the first and second position are provided in the form of opposed locking pin apertures extending from opposite sides of the hopper support, such that a locking pin (92') extending

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through a selected one of the apertures and into engagement with the mounting maintains the support arm in one of the first or second position (see cl. 3, ll. 63-67).

Jennings still further provides an auger means (28) for causing concrete to flow from the hopper-housing (30) to the slip form (34). This structure is equivalent to a vibrator positioned in the hopper because it also functions to cause concrete flow by acting on the concrete itself. See In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990) (noting a structure can be found to be an equivalent when the structure performs the function specified in the claim in substantially the same manner as the function is performed by the corresponding element described in the specification).

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966), that are applied for

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establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jennings, Jr. et al. in view of Baucom (U.S. Pat. No. 4,298,293).

Jennings discloses the apparatus as described above, notably including a means for causing concrete to flow from the hopper to the slip form. Jennings however discloses an auger means for causing this function rather than a vibrator.

Baucom discloses a curb forming apparatus. The apparatus is provided with a vibrator (92) within the hopper (26) for the purpose of causing concrete flow in the apparatus (cl. 3, ll. 51-59).

It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to have modified the device disclosed by Jennings as such to have used a vibrator instead of an auger because such a structure is known in the art

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as an equivalent for causing concrete flow as suggested by Baucom.

7. The following referenced cited but not relied upon are deemed pertinent to the instant application:

Davis (U.S. Pat. No. 3,600,773) discloses a concrete-forming device.

Clarke, Jr. et al. (U.S. Pat. No. 4,798,266) discloses a self-propelled construction apparatus.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Heckenberg whose telephone number is (571) 272-1131. The examiner can normally be reached on Monday through Friday from 9:30 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Benjamin Utech, can be reached at (571) 272-1137. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <<<http://pair-direct.uspto.gov>>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

 2-11-5
Donald Heckenberg
A.U. 1722